



New South Wales

# Supreme Court Rules (Amendment No 400) 2004

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 15 November 2004.

Steven Jupp  
Secretary of the Rule Committee

## **Explanatory note**

The object of these Rules is to make amendments to Part 78 of, and Schedule F to, the *Supreme Court Rules 1970* with respect to applications by creditors for the administration of estates and the withdrawal of caveats with respect to probate matters.

## **2004 No 768**

Rule 1                      Supreme Court Rules (Amendment No 400) 2004

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## **Supreme Court Rules (Amendment No 400) 2004**

under the

Supreme Court Act 1970

### **1    Name of Rules**

These Rules are the *Supreme Court Rules (Amendment No 400) 2004*.

### **2    Amendment of Supreme Court Rules 1970**

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

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**Schedule 1 Amendments**

(Rule 2)

**[1] Part 78, rule 32**

Omit the rule.

**[2] Part 78, rule 33**

Omit rule 33 (1). Insert instead:

- (1) A creditor who desires to commence proceedings for a grant of administration in circumstances where the deceased has left a will must:
  - (a) file an affidavit in proof of the debt to the creditor, and
  - (b) where an executor is appointed by the will and has not renounced probate—serve a citation to take probate on the executor, and
  - (c) where the executor fails to comply with the citation to take probate—serve a citation to pray for administration:
    - (i) on every beneficiary under the will, and
    - (ii) in the case of a partial intestacy, on every person entitled in administration of the estate on intestacy.

**[3] Part 78, rule 33 (4)**

Omit “upon the widow or widower of the deceased and”.

**[4] Part 78, rule 33 (5)–(7)**

Insert after rule 33 (4):

- (5) In any proceedings commenced by a creditor for a grant of administration, the creditor must file an affidavit of compliance with this rule and that none of the persons cited has complied with the citation.
- (6) In any proceedings commenced by a creditor for a grant of administration, the Court may require any one or more of the following:
  - (a) that further evidence be furnished to the Court,
  - (b) that further citations be served,
  - (c) that further notices be given.
- (7) The Court may, if it thinks fit, refuse or withhold a grant of administration to a creditor even if the creditor has complied with this rule.

## 2004 No 768

Supreme Court Rules (Amendment No 400) 2004

Schedule 1 Amendments

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**[5] Part 78, rule 34**

Omit the rule.

**[6] Part 78, rule 64**

Omit the rule. Insert instead:

**64 Withdrawal of caveat—no proceedings for grant or resealing or caveator sole applicant for grant or resealing**

- (1) This rule applies to a caveat if:
  - (a) there are no proceedings for a grant or resealing in the estate, or
  - (b) the caveator is the sole applicant in proceedings for a grant or resealing in the estate.
- (2) A caveator may withdraw a caveat to which this rule applies by filing a notice in Form 115.
- (3) The withdrawal of a caveat under this rule has effect on the date on which the notice referred to in subrule (2) is filed.

**[7] Part 78, rule 65**

Omit “This” from rule 65 (1). Insert instead “Subject to rule 64, this”.

**[8] Part 78, rule 65 (4)–(6)**

Insert after rule 65 (3):

- (4) A draft minute of the order sought must be lodged with the registrar before any order is made on the motion.
- (5) The order must be entered.
- (6) The order may be entered at any time after the minute of it is signed.

**[9] Part 78, rule 66**

Omit the rule. Insert instead:

**66 Withdrawal**

If leave is granted to withdraw a caveat, the caveat is taken to be withdrawn on the granting of that leave.

**[10] Schedule F**

Insert after Form 114:

**Form 115**

P 78, r 64.

**NOTICE OF WITHDRAWAL OF CAVEAT**

I (*name*) of (*address*) withdraw the caveat filed by me on (*date*) and numbered (*number of caveat*).

Dated: (*date*)

(*signature*)

Caveator *or* Caveator's solicitor

**[11] Schedule F, Index of Forms**

Insert after the matter relating to Form 114:

Form 115

Notice of withdrawal of caveat (P 78, r 64).